



00169.001932 (169.1932)

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent of:

Kieran Gerard LARKIN, et al.

Application No.: 09/735,809

Filed: December 14, 2000

For: METHOD AND APPARATUS
FOR UNIFORM LINEAL
MOTION BLUR ESTIMATION
USING MULTIPLE EXPOSURES

Examiner: Tuan V. Ho

Group Art Unit: 2615

Patent No. 6,888,566 B2

Issued: May 3, 2005

June 22, 2005

Mail Stop Patent Ext.
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REQUEST FOR RECONSIDERATION OF
PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(d)

Sir:

RELIEF REQUESTED

Patentee hereby requests reconsideration and recalculation of the Patent Term Adjustment (PTA) for the above-identified patent. See 37 C.F.R. § 1.705(d). For the following reasons, this patent is believed to be entitled to a PTA of 825 days:

06/24/2005 MBERHE1 00000163 09735809
01 FC:1455 200.00 OP

FACTS

1. On December 1, 2004, a Notice of Allowance and Notice of Allowability were mailed, listing the allowed claims as "1-19" and the patent term adjustment as 825 days.

2. However, Claims 1 through 19 and 42 through 47 were pending.

3. Accordingly, on December 16, 2004, Applicants filed a Request for Corrected Notice of Allowability, requesting issuance of a corrected Notice of Allowability confirming that Claims 1 through 19 and --42 through 47-- were allowed.

4. Applicants received no response and filed a second Request on February 28, 2005, when paying the issue fee.

5. The PAIR system (copy of printout attached) assigns 89 days of Applicant delay to the December 16, 2004 Request for Corrected Notice of Allowability.

6. On May 3, 2005, the subject patent issued indicating a PTA of 736 days, i.e., 825 days less the 89 days.

7. The patent is not subject to any terminal disclaimer.

8. In view of the foregoing, Patentees respectfully submit that there were no circumstances constituting a failure to engage in reasonable efforts to conclude processing or examination of this application as set forth in 37 C.F.R. § 1.704.

ARGUMENT

Patent term adjustment is reduced by the period of time during which the applicant failed to engage in reasonable efforts to conclude prosecution. See 35 U.S.C. § 154(b)(2)(C)(i). When papers are filed after the mailing of a Notice of Allowance, such failure is present only when the paper causes “substantial interference and delay in the patent issue process”. See O.G. Notice “Clarification of 37 CFR 1.704(c)(10) - Reduction of Patent Term Adjustment for Certain Types of Papers Filed After a Notice of Allowance has been Mailed” dated June 26, 2001 (copy attached). According to the Notice, papers said to cause such interference and delay include (1) a request for a refund, (2) a status letter, (3) amendments under 37 C.F.R. § 1.312, (4) late priority claims, (5) a certified copy of a priority document, (6) drawings, (7) letters related to biological deposits, and (8) oaths or declarations, whereas papers said not to cause interference and delay include (1) Issue Fee Transmittal, (2) Power of Attorney, (3) Power to Inspect, (4) Change of Address, (5) Change of Status (small/not small entity status), (6) a response to the examiner’s reasons for allowance, and (7) letters related to government interests. *Id.*

While a Request for Corrected Notice of Allowability is not specifically listed in the O.G. Notice as belonging to either of these two classes of examples, Patentees respectfully submit that the Request for Corrected Notice of Allowability filed in this case is not a paper causing interference and delay, and therefore should not affect PTA. Instead, it was necessary for Applicants to file the paper to request correction of an error on the part of the U.S. Patent and Trademark Office, the error being an important one, namely the listing of allowed claims. Therefore, Patentees respectfully submit that the 89 days charged as Applicant delay should be reconsidered.

FORMAL MATTERS

Submitted herewith is a check for \$200.00 for the fee set forth in 37 C.F.R. § 1.18(e). Any deficiency in this fee may be charged or any overpayment credited to Deposit Account No. 06-1205.

REQUEST FOR INTERVIEW

If any questions remain, Patentees respectfully request that the U.S. Patent and Trademark Office contact Patentees' undersigned representative at (202) 530-1010 to schedule an interview.

CONCLUSION

In view of the foregoing, favorable consideration hereof and reconsideration and recalculation of the PTA to be 825 days are earnestly solicited.

Patentees' undersigned attorney may be reached in our Washington, D.C., office by telephone at (202) 530-1010. All correspondence should continue to be directed to our address below.

Respectfully submitted,



Attorney for Patentees
Daniel S. Glueck
Registration No. 37,838

FITZPATRICK, CELLA, HARPER & SCINTO
30 Rockefeller Plaza
New York, New York 10112-3800
Facsimile: (212) 218-2200

DSG/cmg

DC_MAIN 206620v1



Clarification of 37 CFR 1.704(c)(10) -
Reduction of Patent Term Adjustment for
Certain Types of Papers Filed
After a Notice of Allowance has been Mailed

Patent Term Adjustment under 35 U.S.C. 154(b)(1) is reduced by the period of time during which the applicant "failed to engage in reasonable efforts" to conclude prosecution (i.e., processing or examination of an application). See 35 U.S.C. 154(b)(2)(C)(i). Pursuant to 35 U.S.C. 154(b)(2)(C)(iii), the United States Patent and Trademark Office (Office) has prescribed regulations setting forth the circumstances constituting a failure to engage in reasonable efforts to conclude prosecution (i.e., processing or examination of an application). See 37 CFR 1.704. After a "Notice of Allowance" has been mailed, submissions by an applicant that cause a delay in processing or examination of an application will be considered a "failure to engage in reasonable efforts" to conclude prosecution. See 37 CFR 1.704(c)(10) ("failure to engage in reasonable efforts" to conclude prosecution includes submission of an amendment under 37 CFR 1.312 or other paper after a "Notice of Allowance" has been mailed). The reason such a submission is considered a "failure to engage in reasonable efforts" to conclude processing or examination of an application is that delaying the submission of such papers until after an application is allowed causes substantial interference and delay in the patent issue process. See Changes to Implement Patent Term Adjustment under Twenty-Year Patent Term, 65 Fed. Reg. 56365, 56373 (Sept. 18, 2000); 1239 Off. Gaz. Pat. Office 14, 19-20 (Oct. 3, 2000) (final rule).

It should be noted, however, that only certain papers (not all papers), filed after a "Notice of Allowance" is mailed, cause substantial interference and delay in the patent issue process. Therefore, it is the filing of these papers that will be considered a "failure to engage in reasonable efforts" to conclude processing and examination of an application under 37 CFR 1.704. The Office has reviewed many allowed applications (mostly continued prosecution applications (CPAs)) that were filed on or after May 29, 2000, in which the issue fee was paid. The review consistently showed that only certain papers submitted after a "Notice of Allowance" is mailed, interfered with and delayed the patent issue process to such a degree as to constitute a "failure to engage in reasonable efforts" to conclude processing or examination of an application.

Accordingly, the Office is publishing this notice to provide guidance in interpreting the provisions of 37 CFR 1.704(c)(10) to clarify that submission of certain papers after a "Notice of Allowance," which do not cause substantial interference and delay in the patent issue process, are not considered a "failure to engage in reasonable efforts" to conclude processing or examination of an application. The following are examples of such papers: (1) Issue Fee Transmittal (PTOL-85B), (2) Power of Attorney, (3) Power to Inspect, (4) Change of Address, (5) Change of Status (small/not small entity status), (6) a response to the examiner's reasons for allowance, and (7) letters related to government interests (e.g., those between NASA and the Office). Therefore, the submission of these papers after a Notice of Allowance will not be considered a "failure to engage in reasonable efforts" to conclude processing or examination of an application and would not result in reduction of a patent term adjustment pursuant to 37 CFR 1.704(c)(10).

In contrast, the submission of other papers after a "Notice of Allowance" is mailed that do cause substantial interference and delay in the patent issue process are considered a "failure to engage in reasonable efforts" to conclude processing or examination of an

application pursuant to 37 CFR 1.704(c)(10). The following are examples of such papers: (1) a request for a refund, (2) a status letter, (3) amendments under 37 CFR 1.312, (4) late priority claims, (5) a certified copy of a priority document, (6) drawings, (7) letters related to biological deposits, and (8) oaths or declarations.

As guidance for minimizing reductions to any patent term adjustment, applicants should adopt practices that do not delay processing of the applications after the "Notice of Allowance" has been mailed. For instance, instead of filing corrected drawings or editorial amendments after the application has been allowed, applicant should submit such corrected drawings or editorial amendments prior to allowance of the application. In addition, instead of filing a status letter, applicant should use the private Patent Application Information Retrieval (PAIR) system to determine the status of the application (<http://pair-direct.uspto.gov>) or call the Office.

The Patent Application Locating and Monitoring (PALM) system maintains computerized contents records of all patent applications and reexaminations. PAIR is a system that provides public access to PALM for patents and applications that have been published (i.e., information for applications maintained in confidence cannot be obtained), which can be accessed over the Internet at <http://pair.uspto.gov>. The private side of PAIR at <http://pair-direct.uspto.gov> can be used by an applicant to access confidential information about his or her pending application. To access the private side of PAIR, a customer number must be associated with the correspondence address for the application, and the user of the system must have a digital certificate. For further information, contact the Customer Support Center of the Electronic Business Center at (703) 305-3028.

In addition, if PAIR is used to see the PALM records that are relied upon for patent term adjustment purposes, a contents entry with the contents code "DRWS" and the contents description "DRAWING REQUIREMENTS SATISFIED" does not indicate when the drawings were filed and is not a PALM entry that is used in the patent term adjustment calculation.

Any questions or comments about this change should be directed to Karin Tyson, Senior Legal Advisor, Office of Patent Legal Administration, Office of the Deputy Commissioner for Patent Examination Policy. Ms. Tyson can be reached by telephone at (703) 306-3159, or by e-mail at Karin.Tyson@uspto.gov.

May 29, 2001

NICHOLAS P. GODICI
Acting Under Secretary of
Commerce for Intellectual Property and
Acting Director of the United States
Patent and Trademark Office



Portal Home

Patent Applications

[Patent Application Information \(PAIR\)](#)[PAIR Frequently Asked Questions](#)[PAIR Help](#)[Search Class/Subclass/GAU](#)[Manual of Patent Classification](#)[Secure eBusiness](#)[Patent EBC](#)[Customer Numbers](#)[Digital Certificates](#)[Electronic Filing](#)[Private PAIR](#)[Glossary](#)[Patent eBusiness Support/Help](#)[System Alerts](#)[Viewer Download: PDF](#)

Patent Information

[About Patents](#)[Manual of Patent Examining Procedure](#)[Patent Assistance Center](#)[Employee Locator Search](#)[Valid Location Codes](#)[Telephone Directory](#)[Fees](#)[Pay online \(RAM\)](#)[Inventor Resources](#)[News, Federal Register & OG Notices](#)[PTDL Program - libraries near you](#)[Registered Patent Attorneys & Agents](#)

Patent Searches

[Search Patents/Patent Applications - full text & Images](#)[How to View Patent Images](#)[Search Assignments - ownership](#)[Search International Patents](#)[Other Search Resources & Tips](#)[Sequence Searches \(biotech\)](#)[Software for Sequence Listings](#)[Order Copies & Publications](#)[Products & Services](#)

Other

[Copyrights](#)[Policy & Law](#)[Reports](#)[Trademarks](#)

Patent Application Information Retrieval

Patent Application Information Retrieval

[PAIR Frequently Asked Questions](#)[PAIR Help](#)[Search Class/Subclass/GAU](#)[Manual of Patent Classification](#)[Secure eBusiness](#)[Patent EBC](#)[Customer Numbers](#)[Digital Certificates](#)[Electronic Filing](#)[Private PAIR](#)[Glossary](#)[Patent eBusiness Support/Help](#)[System Alerts](#)[Viewer Download: PDF](#)

Select Search

Method:

Application Number:

SUBMIT

Enter

Number:

[Order Cert](#)[Filed](#)[Order Cert](#)[View Order](#)METHOD AND APPARATUS FOR UNIFORM LINEAL MOTION BLUR E
09/735,809 MULTIPLE EXPOSURES[Application Data](#)[Transaction History](#)[Image File Wrapper](#)[Patent Term Adjustments](#)[Foreign Priority](#)[Published Documents](#)[Fees](#)[Publication Dates](#)[Address & Attorney/Agent](#)[Fees](#)[Published Documents](#)[Fees](#)[Publication Dates](#)

12-16-2004	Miscellaneous Incoming Letter	89
12-16-2004	Workflow - File Sent to Contractor	
12-01-2004	Mail Notice of Allowance	
11-29-2004	Issue Revision Completed	
11-29-2004	Notice of Allowance Data Verification Completed	
11-29-2004	Notice of Allowability	
11-20-2004	Date Forwarded to Examiner	
10-12-2004	Response after Non-Final Action	
10-12-2004	Workflow incoming amendment IFW	
09-10-2004	Mail Non-Final Rejection	
09-07-2004	Non-Final Rejection	
07-15-2004	IFW TSS	
07-15-2004	Processing by Tech Center Complete	
07-15-2004	Date Forwarded to Examiner	
07-14-2004	Case Docketed to Examiner in GAU	
06-21-2004	Response to Election / Restriction Filed	
05-19-2004	Mail Restriction Requirement	825
05-17-2004	Requirement for Restriction / Election	
03-10-2004	Case Docketed to Examiner in GAU	
01-16-2002	Case Docketed to Examiner in GAU	
10-29-2001	Case Docketed to Examiner in GAU	
05-25-2001	Application Dispatched from OIPE	
03-20-2001	Request for Foreign Priority (Priority Papers May Be Included)	
02-13-2001	Application Is Now Complete	

02-13-2001	Notice Mailed--Application Incomplete--Filing Date Assigned	↑	
02-12-2001	Correspondence Address Change	↑	80
01-13-2001	IFW Scan & PACR Auto Security Review	↑	
12-14-2000	Initial Exam Team nn	↑	

The Patent Electronic Business Center is available to assist with PAIR questions at (866) 277-6416 or EBC@uspto.gov.